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CRIMINAL AND CIVIL PENALTIES FOR FEDERAL AVIATION ACT VIOLATIONS

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Mr. CONYERS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 4403 which on March 13, 1986, was referred to the Committee on Public Works and Transportation and the Committee on the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary to whom was referred the bill (H.R. 4403) to amend the Federal Aviation Act of 1958 to increase criminal penalties for failure to file certain reports and for falsification of records and to increase civil penalties for violations of aviation safety regulations, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Section 1 is amended to read as follows:

SECTION 1. INCREASED CRIMINAL PENALTY FOR FAILURE TO FILE REPORTS AND FOR FALSIFICATION OF RECORDS.

Subsection (e) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(e)) is amended to read as follows:

"(e) Whoever, being an air carrier, or an officer, agent, employee, or representative of an air carrier—

"(1) intentionally—

"(A) fails or refuses to make a report to the Secretary or Administrator as required by this Act, or to keep or preserve accounts, records, or memoranda in the form and manner prescribed or approved by the Secretary or Administrator;

"(B) falsifies, mutilates, or alters any such report, account, record, or memorandum; or

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"(C) files a false report, account, record, or memorandum;

shall be fined not more than $5,000 in the case of an individual, or $10,000 in the case of a person other than an individual; or

"(2) in a report, account, record, or memorandum required by the Federal Aviation Administration under title VI of this Act, or any rule, regulation, or order issued thereunder, to be made or kept, intentionally falsifies or conceals a material fact, or makes or invites reliance upon a false statement or representation concerning a material fact, shall be fined under title 18, United States Code, imprisoned not more than 5 years, or both.".

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to promote airline safety and reduce the risk involved in air travel by deterring violations of Federal Aviation Administration rules and regulations.

CURRENT LAW

The Federal Aviation Act of 1958 (the "Act") [1] is the principal statute governing the commercial airlines industry. The Act regulates both economic matters (such as fitness determinations) and safety matters (such as aircraft maintenance, flight crew training, and air traffic control). The Department of Transportation exercises jurisdiction over economic matters, while the Federal Aviation Administration has primary responsibility for overseeing airline safety.

The FAA sets standards for licensing and training pilots, for aircraft manufacture, design, and maintenance, and for air traffic control. The FAA operates through a network of safety inspectors located throughout the country and assigned to various airlines. FAA safety inspectors conduct inspections and investigations of procedures and practices at the airlines, but must, to a large degree, depend on records maintained by the airlines and reports which are required to be filed with the FAA.[2]

Airlines are required to maintain records concerning pilot training, maintenance, flight time, weight and balance calculation, hazardous material training, and the processing and certification of flight crews. Reports on the results of aircraft inspections must be filed with the agency, along with reports concerning the detection and correction of any aircraft defects.[3]

The Act provides both criminal and civil penalties for violating FAA rules and regulations. Section 902(e) of the Act makes it a misdemeanor punishable by a fine of not less than $100 or more

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[1] Pub. L. No. 85-726, 72 Stat. 737, 49 U.S.C. 1301 et seq.

[2] Statements of E. Tazewell Ellett, Chief Counsel, Federal Aviation Admin., and John B. Galipault, president, Aviation Safety Institute, concerning H.R. 4403 before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary (May 22, 1986).

[3] Statement of Herbert R. McClure, Associate Director, Resources, Community, and Economic Development Division, GAO on FAA's Airline Inspection Program Before the Subcomm. on Aviation of the House Comm. on Pub. Works and Transportation, May 14, 1986.

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than $5,000, to fail or refuse to make or keep a required report or record, or willfully to file a false report or record. Section 901(a) of the Act provides that a person who violates a provision of title III, IV, V, VI, VII, or XII, or section 1114 of the Act or any regulations thereunder, is subject to a civil penalty of $1,000 ($10,000 if the violation relates to the transportation of hazardous materials).[4]

Need for Change in Current Law

The deregulation of the airline industry in 1978 had a significant impact on the FAA's ability to monitor compliance with FAA regulations. The number of scheduled airlines more than doubled between 1978 and 1984, going from 240 to 500, and the number of aircraft in the domestic commercial fleet rose from 3,000 to 4,200.[5] The FAA took few steps to monitor and deal with the impact of these increases on its inspection workload and staffing requirements, and did not collect data on what inspections were or were not being performed or on what the inspections were showing.[6] As a result, a shortage of inspectors developed and the agency was forced more and more to rely on some airlines for self-inspection and self-compliance with safety regulations.[7]

The economic realities of competition in the industry provide a strong inducement for the airlines (and their employees) to avoid problems by presenting information in a self-serving manner or withholding or falsifying information that would provoke sanctions. Thus, in the past 5 years, the FAA and the public have increasingly become aware that certain airlines have not complied fully or truthfully with FAA rules and regulations requiring the keeping of records and the filing of reports.[8]

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[4] Section 901(a) also provides that "if such violation is a continuing one, each day of such violation shall constitute a separate offense."

Title II of the Act relates to air traffic rules, air navigation facilities, passenger security screening, and air transportation security in general. Title V of the Act relates to the nationality and ownership of aircraft, including the registration of foreign-owned aircraft. Title IV of the Act relates to economic regulation, including rates, tariffs, and classification and exemption of carriers. Title VI of the Act relates to air safety, including airman certificates, air carrier operating certificates, maintenance of equipment, and airport operating certificates. Title VII of the Act relates to aircraft accident investigation, including both civil and military aircraft. Title XII of the Act relates to miscellaneous matters, such as the integrity of military airspace. Section 1114 of the Act relates to certificate authority of foreign and domestic carriers that serve countries not committed to opposing terrorism.

[5] Statement of Herbert R. McClure, Associate Director, Resources, Community, and Economic Development Division, GAO, on FAA's Airline Inspection Program before the Subcomm. on Aviation of the House Comm. on Pub. Works and Transportation (May 14, 1986); statements of E. Tazewell Ellett, Chief Counsel, Federal Aviation Admin., and John B. Galipault, president, Aviation Safety Institute, concerning H.R. 4403 before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary (May 22, 1986.)

[6] Statement of Herbert R. McClure, Associate Director, Resources, Community, and Economic Development Division, GAO, on FAA's Airline Inspection Program before the Subcomm. on Aviation of the House Comm. on Pub. Works and Transportation (May 14, 1986); statement of John B. Galipault, president Aviation Safety Institute, concerning H.R. 4403 before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary (May 22, 1986).

[7] Statements of E. Tazewell Ellett, Chief Counsel, Federal Aviation Admin., and John B. Galipault, president, Aviation Safety Institute, concerning H.R. 4403 before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary (May 22, 1986).

[8] For example, John Galipault, head of the Aviation Safety Institute, reported that in 1981, the FAA discovered that Air Indiana had falsified records concerning crew duty time, flying time, and weight and balance calculation. In 1983, the FAA grounded Air Illinois planes when it discovered that Air Illinois officials kept two sets of maintenance records, one false and one accurate. In 1984, Provincetown-Boston Airline, Inc., was suspended for two weeks following two accidents. The FAA alleged numerous falsifications of records in several areas of operation, as well as other misconduct, including certifying a pilot on a DC-3 without giving her a flight test.

Continued

The inducement is increased, moreover, by the criminal fine and civil penalty levels. Inflation has severely eroded their deterrent effect. The criminal fine amount in section 902(e) of the Act has been unchanged for 30 years, and the civil penalty amount in section 901(a) of the Act was set more than 50 years ago. The amounts involved can be considered a relatively minor cost of doing business by a violator. An increase in the amounts would drastically change the economics of a decision not to file a required report, or to file a false report, and would therefore deter safety violations.[9]

COMMITTEE CONSIDERATION

H.R. 4403 has been jointly referred to the Committee on the Judiciary and the Committee on Public Works and Transportation. Section one of the bill amends section 902(e) of the Act to increase, from a misdemeanor to a felony with a maximum term of imprisonment of 5 years, the penalty for failing to file, or falsifying, reports. Section two of the bill amends section 901(a)(1) of the Act to expand the section to punish violations of section 1101 of the Act (or regulations issued under that section) and to increase the civil penalty for violating title III, VI, or XII of the Act (or regulations issued under those titles). The Committee on the Judiciary has jurisdiction over section one of the bill, and the Committee on Public Works and Transportation has jurisdiction over section 2 of the bill. Accordingly, the Committee on the Judiciary has considered changes only in section one of the bill.

The Subcommittee on Criminal Justice held a hearing on May 22, 1986, receiving testimony from Rep. Dan Glickman, principal sponsor of the bill; the United States Department of Justice; the Federal Aviation Administration; and the Aviation Safety Institute. All supported the legislation.

Subsequently, the Air Transport Association, representing the major airlines in the United States, informally raised 3 concerns with current law and H.R. 4403. First, ATA suggested that not all of the numerous regulations promulgated by the FAA are of equal importance from the standpoint of safety of air flight. Some regulations, such as those governing maintenance and repair, are critical to airworthiness, while others relate more to record keeping and economic matters. Under current law and H.R. 4403 as introduced, violations of either of these types of regulations are punished equally. The ATA suggested a tiered scheme of civil fines, with a lesser penalty for violating regulations that do not directly and substantially relate to air safety.

Second, ATA pointed out that current law and H.R. 4403, as introduced, provide a civil penalty for *each day* of a continuing violation. The FAA, however, calculates the penalty for a safety violation on a per-flight basis, because the regulations prohibit the *oper-*

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and making multiple "fraudulent or intentionally false statements" on official flight test records. More recently, Eastern Airlines was notified that it was subject to a record $9.5 million civil penalty after the FAA found 78,000 violations of the Federal Aviation Act during an inspection of only 19% of Eastern's fleet. Statement of John B. Galipault, President, Aviation Safety Institute, concerning H.R. 4403 before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary (May 22, 1986).

[9] Statement of E. Tazewell Ellett, Chief Counsel, Federal Aviation Admin., concerning H.R. 4403 before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary (May 22, 1986).

ation of an aircraft if it does not meet FAA standards. This practice can lead to a compounding of fines when aircraft make several flights per day. There is a further compounding, ATA argues, because the same defect may violate several regulations. Therefore, in a case such as the recent Eastern Airlines action (which the airline is challenging), the 78,000 violations may not necessarily represent 78,000 different "bad acts" or defects. ATA believes that FAA's manner of penalty assessment is inconsistent with the statute and should be addressed in H.R. 4403.[10]

Finally, ATA argued that the severity of the criminal penalty provided by H.R. 4403 could be counterproductive from the standpoint of safety by discouraging airline personnel from bringing violations to the attention of the FAA. The ATA argued that misdemeanor penalties should be maintained without adding a felony provision.

The Subcommittee on Criminal Justice marked up H.R. 4403 on June 12, 1986, voting to report favorably on the bill, with an amendment. The Committee on the Judiciary marked up the bill on July 30, 1986, and reported favorably on the bill, with an amendment.

The bill as reported by the Committee does not respond to the first two concerns of ATA outlined above. Those concerns involve section two of the bill, which is within the jurisdiction of the Committee on Public Works and Transportation. The bill as reported does respond, however, to ATA's concern about increasing the criminal penalties.

As introduced, H.R. 4403 increased the penalty for violating section 902(c) of the Act to a felony with maximum punishment of a fine under title 18 and imprisonment for 5 years.[11] The Committee carefully considered ATA's argument about increasing the criminal penalties, but does not agree with ATA that stronger penalties will deter the reporting of violations. However, since not all of the numerous FAA rules and regulations are equally important from the standpoint of air safety, the Committee decided that the more severe penalty should apply only to falsification of material facts in a report or record that directly affects air safety (i.e., a report or record required under title VI of the Act). In addition, the Committee decided to raise the misdemeanor fine level for organizations that violate section 902(e) of the Act.

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[10] The Second Circuit seems to have supported the industry's position. FAA v. Landy, 705 F.2d 624, 635, n.14 (7th Cir. 1983) (trial judge's "calculation on a per flight basis rather than per day basis . . . was not error because each flight occurred on a separate day.").

[11] 18 U.S.C. 3623 ("Alternative fines") provides different fine levels for individuals and organizations. For an individual, the maximum fine is not more than the greatest of (1) the amount specified in the law defining the offense; (2) the greater of twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss inflicted upon another by the offense; (3) $250,000 in the case of a felony or a misdemeanor resulting in death; or (4) $100,000 in the case of a misdemeanor punishable by imprisonment for more than 6 months. For an organization, the maximum fine is not more than the greatest of (1) the amount specified in the law defining the the offense; (2) the greater of twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss inflicted upon another by the offense; (3) $500,000 in the case of a felony or a misdemeanor resulting in death; or (4) $100,000 in the case of a misdemeanor punishable by imprisonment for more than 6 months. However, the aggregate of fines that can be imposed on a defendant at the same time for offenses that arise from a common scheme or plan and that do not cause separable or distinguishable kinds of harm or damage, is twice the amount imposable for the most serious offense.

SECTION-BY-SECTION ANALYSIS

Section one of the bill amends section 902(e) of the Federal Aviation Act of 1958. Section 902(e) makes it a misdemeanor for an air carrier, or an officer, employee, agent, or representative of an air carrier, "knowingly and willfully" (1) to fail or refuse to make a report required by the FAA, or to keep or preserve accounts, records, and memoranda in the form and manner prescribed by the FAA; (2) to falsify, mutilate, or alter any such report, account, record, or memorandum; or (3) to file any false report, account, record, or memorandum. The penalty is a fine of not less than $100 or more than $5,000.

Section one of the bill as introduced would amend section 902(e) to make a violation of section 902(e) a felony with a maximum punishment of a fine under title 18 of the United States Code and a 5 year term of imprisonment.[12] The Committee has amended section one of the bill.

Section one of the bill as reported rewrites section 902(e) of the Federal Aviation Act of 1958, primarily for the purpose of clarifying the provisions of section 902(e). In rewriting that section, the Committee used the drafting conventions and format used by the Committee in the criminal code recodification legislation bill it reported in the 96th Congress.[13]

New section 902(e)(1) makes it an offense for an air carrier (or an officer, agent, employee, or representative of an air carrier) intentionally to fail or refuse to make a report required by the Federal Aviation Act of 1958 or to keep or preserve accounts, records, or memoranda in the form and manner prescribed by the FAA; to falsify, mutilate, or alter any such report, account, record, or memorandum; or to file a false report, account, record, or memorandum. The penalty for violating new section 902(e)(1) is a $5,000 fine if the person is an individual and a $10,000 fine if the person is an organization.

Present section 902(e) has a mens rea requirement of "knowingly and willfully." New section 902(e)(1) has a mens rea requirement of "intentionally," which means that the conduct or result is the conscious objective of the person.[14] The Committee does not believe that this makes a substantive change from present section 902(e).

New section 902(e)(2) makes it an offense for an air carrier (or an officer, agent, employee, or representative of an air carrier), in a report, account, record, or memorandum required by the FAA under title VI of the Federal Aviation Act of 1958, intentionally to falsify or conceal a material fact or to make or invite reliance upon a false statement or representation concerning a material fact. The maximum penalty for violating new section 902(e)(2) is a fine under title 18 of the United States Code and imprisonment for 5 years.

Present section 902(e) has a mens rea requirement of "knowingly and willfully." New section 902(e)(2) has a mens rea requirement of "intentionally," which means that the conduct or result is the con-

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[12] *See* note 11, *supra*.
[13] *See* H.R. Rep. No. 1396, 96th Cong., 2d Sess. (1980).
[14] *Id.* at 33.

scious objective of the person.[18] The Committee does not believe that this makes a substantive change from present section 902(e).

Section two of the bill amends section 901(a)(1) of the Federal Aviation Act of 1958. Section 901(a)(1) authorizes the imposition of a civil penalty upon a person who violates a provision of title III, IV, V, VI, VII, or XII, or of section 1114, of the Federal Aviation Act of 1958. The civil penalty is not more than $1,000 per violation, unless the violation relates to the transportation of hazardous materials, in which case the civil penalty is not to exceed $10,000.

Section 2(1) of the bill amends section 901(a)(1) by making a violation of section 1101 of the Federal Aviation Act of 1958 subject to the civil penalty provided by section 901(a)(1). Section 1101 requires a person to notify the FAA of the proposed construction or alteration of a structure (such as a broadcast tower) when such notice would promote air safety.

Section 2(2) of the bill amends section 901(a)(1) to provide that the higher civil penalty of section 901(a)(1)—$10,000—will also apply to violations of title III, VI, or XII (or any rule or regulation issued under those titles) by a person who operates aircraft for carrying persons or property for compensation or hire.

Committee Vote

The Committee reported H.R. 4403 on July 30, 1986, by voice vote, a quorum of Members being present.

Oversight Finding

The Committee makes no oversight findings with respect to this legislation.

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to this Committee by the Committee on Government Operations.

New Budget Authority

In regard to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 5142 creates no new budget authority or increased tax expenditures for the Federal Government.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Respresentatives, the Committee finds that the bill will have no inflationary impact on prices or costs in the operation of the national economy.

Federal Advisory Committee Act of 1972

The Committee finds that this legislation does not create any new advisory committee within the meaning of the Federal Advisory Committee Act of 1972.

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[18] *Id.*

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 6, 1986.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4403, a bill to provide increased criminal penalties for failure to file reports and for falsification of records under the Federal Aviation Act of 1958, as ordered reported by the House Committee on the Judiciary, July 30, 1986. We estimate that no significant cost to the Federal Government or to state or local governments would result from enactment of this legislation.

Currently, if air carriers or responsible individuals associated with them fail to file required reports or intentionally falsify records, such violations are misdemeanors punishable by a fine of not less than $100 and not more than $5,000. H.R. 4403 would make these violations felonies and increase the fine to not more than $5,000 in the case of an individual, or $10,000 in the case of a person other than an individual. Certain reporting violations would be subject to fines, imprisonment of not more than five years, or both.

Enactment of this legislation may result in greater revenues resulting from increased fines, which could be offset somewhat by additional costs of incarceration of individuals who currently are subject only to fines. However, these potential collections or costs are not likely to be significant, because prosecutions under this statute are not likely to be frequent.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

COST ESTIMATE

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee agrees with the cost estimate of the Congressional Budget Office and estimates that the enactment of this legislation [will not result in any significant cost to the Federal Government, and will not result in any cost to State and local governments.]

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL AVIATION ACT OF 1958

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TITLE IX—PENALTIES

CIVIL PENALTIES

SAFETY, ECONOMIC, AND POSTAL OFFENSES

SEC. 901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII, or of section [1114] *1101, 1114, or 1115(e)(2)(B),* of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each violation, except that the amount of such civil penalty shall not exceed $10,000 for each such violation which relates to the transportaton of hazardous materials[.] *and for each such violation of title III, VI, or XII or any rule, regulation, or order issued thereunder by a person who operates aircraft for the carriage of persons or property for compensation or hire.* If such violation is a continuing one, each day of such violation shall constitute a separate offense. The amount of any such civil penalty which relates to the transportation of hazardous materials shall be assessed by the Secretary or his delegate upon written notice upon a finding of violation by the Secretary, after notice and an opportunity for a hearing. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. The amount of any such civil penalty for any violation of any provision of title IV of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i) of this Act, or any term, condition, or limitation of any permit or certificate issued under title IV shall be assessed by the Board only after notice and an opportunity for a hearing and after written notice upon a finding of violation by the Board. Judicial review of any order of the Board assessing such a penalty may be obtained only pursuant to section 1006 of this Act. This subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board as appropriate, a timely report of any such action taken.

(2) Any civil penalty may be compromised by the Secretary of Transportation in the case of penalties provided for in subsections (c) and (d) of this section or violations of title III, V, VI, or XII of this Act, or any rule, regulation, or order issued thereunder or by the National Transportation Safety Board in the case of violations

of title VII of this Act, or any rule, regulation, or order issued thereunder, or by the Postmaster General in the case of regulations issued by him. The amount of such penalty when finally determined or fixed by order of the Board, or the amount agreed upon in compromise, may be deducted from any sums which the United States owes to the person charged.

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CRIMINAL PENALTIES

GENERAL

SEC. 902. (a) * * *

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[(e) Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to make a report to the Board or Administrator as required by this Act, or to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board or Administrator, or shall, knowingly and willfully, falsify, mutilate or alter any such report, account, record, or memorandum, or shall knowingly and willfully file any false report, account, record, or memorandum, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000.]

(e) Whoever, being an air carrier, or an officer, agent, employee, or representative of an air carrier—

(1) intentionally—

(A) fails or refuses to make a report to the Secretary or Administrator as required by this Act, or to keep or preserve accounts, records, or memoranda in the form and manner prescribed or approved by the Secretary or Administrator;

(B) falsifies, mutilates, or alters any such report, account, record, or memorandum; or

(C) files a false report, account, record, or memorandum;

shall be fined not more than $5,000 in the case of an individual, or $10,000 in the case of a person other than an individual; or

(2) in a report, account, record, or memorandum required by the Federal Aviation Administration under title VI of this Act, or any rule, regulation, or order issued thereunder, to be made or kept, intentionally falsifies or conceals a material fact, or makes or invites reliance upon a false statement or representation concerning a material fact, shall be fined under title 18, United States Code, imprisoned not more than 5 years, or both.

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